

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

COACH, INC., a Maryland Corporation;  
COACH SERVICES, INC., a Maryland  
Corporation,

Plaintiffs,

vs.

PEGASUS THEATER SHOP, an  
unknown business entity; SHERL  
STOCKING, an individual; and DOES  
1-10, inclusive.

Defendants.

CASE NO. 12-CV-01631-MJP

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT RE  
DEFENDANTS' LIABILITY FOR  
TRADEMARK INFRINGEMENT**

NOTE ON MOTION CALENDAR:  
July 19, 2013

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

As by now it is well known that an illicit multimillion dollar industry has developed in the United States involving the unlawful importation , distribution, offer for sale and sale of merchandise bearing counterfeits and/or infringing imitations of the trademarks and names of legitimate manufacturers and distributors. United States Congressman Carlos J. Moorhead has estimated that, while in 1982 the annual cost of counterfeiting and piracy to U.S. businesses was about \$5.5 billion per year, it had risen to \$200 billion by 1996. [See Cong. Rec. H5778, June 4,1996, Remarks of Cong. Moorhead, reprinted at 52 P.T.C.J. 184 (June 6, 1996)]

This counterfeiting industry has often targeted Plaintiffs Coach, Inc. and Coach Services, Inc. ("Plaintiffs" or "Coach") and their family of marks. Such counterfeiting irreparably injures Coach and the public. For instance, consumers believe they are purchasing authorized Coach products when in fact they are buying substandard counterfeit products. When these infringing products prematurely break or fade, consumers question the quality of Coach's products. Furthermore, these infringing products dilute the value of Coach's many trademarks.


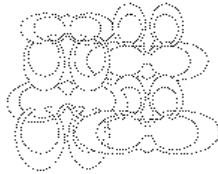

Defendants Pegasus Theater Shops and Sherl Stocking (collectively "Defendants") have introduced into the stream of commerce handbags, wallets, eyeglass, watches, and cell-phone holders bearing marks identical and/or confusingly similar to Coach's federally registered trademarks. Qualified and properly trained investigators have identified and purchased products infringing on the mark at issue from Defendants' store. Further, Defendants have admitted to the purchase and sale of counterfeit items bearing the mark at issue. Thus, summary judgment on the issue of liability for trademark infringement against Defendants is appropriate.





## II. STATEMENT OF FACTS

### A. Coach's Trademarks

Coach was founded more than seventy years ago as a family-run workshop in a Manhattan loft. Since that time, Coach has been engaged in the manufacture, marketing, and sale of fine leather and mixed material products including handbags, wallets, travel cases, briefcases, planners and diaries, leather goods, watches, eyewear, footwear, apparel, and accessories. (Declaration of Ethan Y. Lau ("Lau Decl."), ¶ 4) Coach Services, Inc., Coach, Inc.'s wholly owned subsidiary (hereinafter collectively "Coach"), is the worldwide owner of the trademark "COACH" and various composite trademarks and assorted design components ("Coach Marks"). (Lau Decl., ¶ 5)

Amongst the many Coach Marks, some of the most well known and recognized marks are Coach Word Mark, the Signature C Mark, the Amended CC & Design Signature C Mark, the Coach & Lozenge Design, the Heritage Logo, the Coach Stylized Mark, the Coach Est. 1941 Mark, and the Coach & Tag Design (collectively referred to herein as the "Coach Marks.") (Lau Decl., ¶ 6).

Mark Name	Image
Coach Word Mark	COACH
Signature C Mark	
Amended CC & Design Signature C Mark	
Coach & Lozenge Design	

1	Heritage Logo	
2		
3	Coach Stylized Mark	
4		
5	Coach Est. 1941 Mark	
6		
7		
8	Coach & Tag Design	
9		
10		

11 Coach has used the Coach Word Mark in association with the sale of goods  
12 since as early as 1963. The Coach Word Mark was first registered with the United  
13 States Patent and Trademark Office in 1977. The Coach Word Mark is registered for  
14 various goods, including handbags, luggage, key fobs, tote bags, and clutches. (Lau  
15 Decl., ¶ 7, Ex. 1)

16 Coach has used the Signature C Mark in association with the sale of goods in its  
17 “Signature” line of goods since as early as 2002. The Signature C was first registered  
18 at the U.S. Patent and Trademark Office in 2002. The Signature C is registered for  
19 various goods, including handbags, briefcases, luggage, wallets, key cases, and fabric  
20 for use in the manufacture of clothing, shoes, handbags and luggage. (Lau Decl., ¶ 8,  
21 Ex. 2)

22 The Amended CC & Design Signature C mark was first registered in 2005; it is  
23 used for *inter alia* handbags, purses, fabrics and clothing. (Lau Decl. ¶ 9, Ex. 3) The  
24 Coach & Lozenge Design mark was first registered in 1997; it is used for *inter alia*  
25 handbags, purses, fabrics and clothing. (Lau Decl. ¶ 10, Ex. 4) The “Heritage Logo”  
26 mark was first registered in 2008; it is used for *inter alia* handbags, leather cases,  
27 purses, and wallets. (Lau Decl., ¶ 11, Ex. 5) The Coach Stylized mark was first  
28

1 registered in 2007; it is used for for *inter alia* luggage, backpacks and shoulder bags.  
 2 (Lau Decl., ¶ 12, Ex. 6) The Coach Est. 1941 mark was first registered in 2007; it is  
 3 used for *inter alia* handbags, small leather goods, jackets and coats. (Lau Decl., ¶ 13,  
 4 Ex. 7)

5 Coach has long been manufacturing and selling in interstate commerce high  
 6 quality products under the aforesaid Coach Marks. These registrations are valid and  
 7 subsisting. Through longstanding use, advertising and registration, the Coach Marks  
 8 have achieved a high degree of consumer recognition. (Lau Decl., ¶ 14)

9 Coach has achieved billions of dollars of sales annually from goods bearing the  
 10 Coach Marks. As such, the Coach Marks and the goodwill associated therewith are  
 11 valuable assets of Coach. (Lau Decl., ¶ 15) Coach and its predecessors have expended  
 12 over a hundred million dollars in advertising, promoting, and marketing goods  
 13 featuring the Coach Marks. (Lau Decl., ¶ 16) Due to Coach's long use, extensive  
 14 sales, and significant advertising and promotional activities, the Coach Marks have  
 15 achieved widespread acceptance and recognition among the consuming public and the  
 16 trade throughout the United States. (Lau Decl., ¶ 16) The arbitrary and distinctive  
 17 Coach Marks serve to identify Coach as the source/origin of the goods on which they  
 18 appears. (Lau Decl., ¶ 16)

#### 19 **B. Defendants' Infringement of the Coach Marks**

20 On February 23, 2012 private investigator Donald Bambenek, contacted by  
 21 Coach the day before, entered into Pegasus Theater Shops, located 1003 at 1<sup>st</sup> Street,  
 22 Snohomish, Washington 98290, to conduct an undercover buy of products bearing  
 23 counterfeit reproductions of the Coach Marks. (Declaration of Donald Bambenek.  
 24 ("Bambenek Decl." ¶ 5; Lau Decl., ¶ 17) Upon entering the store Mr. Bambenek  
 25 observed and purchased a number of items bearing counterfeit reproductions of the  
 26 Coach Marks (hereinafter, the "Disputed Products"). (Bambenek Decl. ¶ 6; Ex. 1) Mr.  
 27 Bambenek forwarded the Disputed Products to Coach's in-house counsel,  
 28



Ethan Lau. (Bambanek Decl., ¶ 7; Lau Decl., ¶ 18). Mr. Lau inspected the Disputed Products and determined same to be counterfeit and/or infringing. (Lau Decl., ¶¶ 19-20)

Defendants have admitted to the purchase the sale of the Disputed Products. (Declaration of Michael Marchand ("Marchand Decl."), Ex. 1 at 2:10-3:16; Ex. 2 at 2:20-3:1; Ex. 3 at 9:17-10:1, 11:15-13:10; 19:14-20:7; 21:3-21:13; 21:24-23:5) Defendants are not, nor have ever been a licensed retailer of authentic Coach products. (Lau Decl., ¶ 22; Marchand Decl., Ex. 2 at 2:15 - 2:19)

Defendant Sherl Stocking is the COO and majority owner of Defendant Pegasus Theater Shops. (Marchand Decl., Ex. 3 at 7:2 - 8:1) Mr. Stocking is solely responsible for the purchase of products for subsequent retail sale. (Marchand Decl., Ex. 3 at 9:17-10:10) Mr. Stocking purchased the Disputed Products. (Marchand Decl., Ex. 3, at 14:7 - 14:15)

Consequently, in September 2012, Coach filed a Complaint against Defendants alleging trademark for the purchase and sale of products bearing counterfeit reproductions of Coach's federally registered trademarks in the matter entitled Coach, Inc. v Pegasus Theater Shops, Case No. 2:12-CV-01631.

### **III. LEGAL ARGUMENT**

#### **A. Standard of Review for a Summary Judgment Motion**

The summary judgment procedure aims to discover whether there is evidence requiring the fact weighing process of a trial. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." [Fed.R.Civ.P. 56(c)] The United States Supreme Court has observed that summary judgment and summary adjudication have proven a beneficial approach to reduce the burden on our federal court system. [See Celotex Corp. v. Catreft, 477 U.S. 317, 327 (1986)]

1 The burden on the moving party is satisfied by a showing that there is an  
 2 absence of evidence to support the nonmoving party's case. [Celotex at 322] Once the  
 3 moving party meets this initial obligation, the nonmoving party may not rest on mere  
 4 allegations or denials in the pleadings but must "come forth with 'specific facts'  
 5 showing that there is a genuine issue for trial." [Matsushita Elec. Indust. Co. v. Zenith  
 6 Radio Corp., 475 U.S. 574, 587 (1986)] A summary judgment motion may be granted  
 7 if the "pleadings, depositions, answers to interrogatories, and admissions on file,  
 8 together with the affidavits, if any, show that there is no genuine issue as to any  
 9 material fact." [Fed.R.Civ.P. 56(c)]

10 Pursuant to Rule 56, "[a]n interlocutory summary judgment may be rendered on  
 11 liability alone, even if there is a genuine issue on the amount of damages."  
 12 [Fed.R.Civ.P. 56(d)(2); see also Vaxiion Therapeutics, Inc. v. Foley & Lardner LLP,  
 13 593 F.Supp.2d 1153, 1164 (S.D.Cal. 2008)]

14 **B. Coach is Entitled to Summary Judgment as to the Issue of Liability**  
 15 **for Trademark Infringement against Defendants**

16 In order to succeed on a trademark infringement claim, a plaintiff must establish:  
 17 1) that it has a valid, protectable trademark, and 2) defendants subsequently and  
 18 without authorization used a similar mark likely to cause consumer confusion,  
 19 deception or mistake. [Brookfield Communications v. West Coast Entertainment, 174  
 20 F.3d 1036, 1046 (9th Cir. 1999); Toho Co. v. William Morrow Co., 33 F. Supp. 2d  
 21 1206, 1210 (C.D. Cal. 1998)]

22 **1. Validity of the Coach Marks**

23 Coach has federal registrations for all the marks which it seeks to protect in this  
 24 matter. (Lau Decl., ¶¶ 6 – 14; Ex. 1-8) The federal registration of a trademark with  
 25 the U.S. Patent and Trademark Office constitutes "prima facie evidence of the validity  
 26 of the registered mark, ownership of the mark and of the registrant's exclusive right to  
 27 use the registered mark." [15 U.S.C. §§ 1057(b), 1115(a); Brookfield, 174 F.3d at  
 28 6]

1046-47] Coach Services, Inc., the wholly-owned subsidiary of Coach, Inc., is the owner of all the registrations for the Coach Marks. (Lau Decl., ¶ 5) Defendant does not dispute the validity of any of the above registrations.

## 2. Likelihood of Confusion is Presumed Where Goods are Counterfeit

The Ninth Circuit has traditionally applied an eight factor balancing test in order to determine whether a defendant's infringement caused a likelihood of confusion. [See AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979)] However, a summary judgment motion in a counterfeiting case is readily granted because there is no question that there has been a likelihood of confusion. A counterfeiting case is of such a nature that it "indicates a strong likelihood of confusion." [Phillip Morris U.S.A. Inc. v. Shalabi, 352 F. Supp. 2d 1067, 1073 (C.D. Cal. 2004)] "In cases involving counterfeit marks, it is unnecessary to perform the step-by-step examination [of the factors] because counterfeit marks are inherently confusing." [Id.] "Multi-factored balancing is unnecessary in cases . . . where the defendant has misappropriated precise counterfeits of the plaintiff's trademarks on goods that compete with the trademark holder's own goods." [General Motors Corp. at 761 (In counterfeiting cases, "a likelihood of confusion is presumed when a defendant intentionally copies a trademark design with the intent to derive a benefit from the reputation of another.")]<sup>1</sup>

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<sup>1</sup> "The counterfeit merchandise is a duplicate for the genuine article. Where a counterfeit item is virtually identical to the genuine item, the 'very purpose of the individuals marketing the cheaper [counterfeit] items is to confuse the buying public into believing that it is buying the true article.'" [Fila U.S.A., Inc. v. Kim, 884 F. Supp. 491, 494 (S.D. Fla. 1995)] Thus, in a counterfeiting case, the registered trademark holder need not prove intent to deceive in order to recover. [Polo Fashions, Inc. v. Branded Apparel Merchandising, Inc., 592 F. Supp. 648, 650 (D. Mass. 1984)] The rationale is that a defendant's use of a name or mark "cannot be justified by a claim of innocence, good faith, or lack of knowledge." [Polo Fashions, Inc. v. Clothes

While the Lanham Act's likelihood of confusion standard is predominantly factual in nature, the likelihood of confusion is presumed in a case where the defendant has manufactured, sold, or distributed counterfeit goods. [See Gucci America, Inc. v. Duty Free Apparel, 286 F. Supp. 2d 284, 287 (S.D.N.Y. 2003) ("counterfeits, by their very nature, cause confusion"); Philip Morris U.S.A. Inc. v. Felizardo, 2004 U.S. Dist. LEXIS 11154, \*18 (S.D.N.Y. 2004) ("in cases involving counterfeit marks, it is unnecessary to perform the step-by-step examination of [the factors] because counterfeit marks are inherently confusing"); General Motors Corp. v. Autovation Technologies, Inc., 317 F. Supp. 2d 756, 761 (E.D. Mich. 2004) ("a likelihood of confusion is presumed when a defendant intentionally copies a trademark design")<sup>2</sup>]

The Lanham Act defines a "counterfeit" as "a spurious mark which is identical with, or substantially indistinguishable from, a registered mark." [15 U.S.C.A. §1127] As J. Thomas McCarthy instructs, "A 'counterfeit mark' is a false mark that is identical with, or substantially indistinguishable from, the genuine mark. Often, counterfeit merchandise is made so as to imitate a well-known product in all details of construction and appearance so as to deceive customers into thinking that they are getting genuine merchandise." [J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, 4th Ed. (2003) (emphasis added)]

Encounters, 1985 U.S. Dist. LEXIS 17838, 8, 227 U.S.P.Q. 327 (N.D. Ill. 1985)] "Neither a finding of fraudulent intent, nor of bad faith . . . is required to establish liability for trademark infringement. . . . It is the objective fact of the infringement that is all important." [Id. at 7-8]

<sup>2</sup> In General Motors Corporation v. Autovation Technologies, Inc., the defendant, who was neither affiliated with nor authorized by GM to use the GM trademarks, sold products and parts that were counterfeits of the GM trademarks, such as foot pedals and replacement pedals. [General Motors, 317 F. Supp. 2d at 760] The court in stated that where a defendant has "misappropriated precise counterfeits of the plaintiff's trademarks on goods that compete with the trademark holder's own goods" the likelihood of confusion is presumed. [Id.] <sup>8</sup>

The marks that appear on Defendants' products are substantially indistinguishable from the Coach Marks that appears on authentic Coach products (Lau Decl., ¶ 23, Ex. 8):

Defendants' Products <sup>3</sup>	Authentic Coach Products
	
	

<sup>3</sup> Images in this chart reflect entire images of Disputed Products and particular features of Disputed Products which display counterfeit Coach Marks. These images do not reflect all of the instances of Coach Marks on the Disputed Products.



Defendants' Products <sup>3</sup>	Authentic Coach Products
	
	



Defendants' Products <sup>3</sup>	Authentic Coach Products
	
	



Defendants' Products <sup>3</sup>	Authentic Coach Products
	
	



Defendants' Products <sup>3</sup>	Authentic Coach Products
	
	

Defendants' Products <sup>3</sup>	Authentic Coach Products
	

Defendants' Products <sup>3</sup>	Authentic Coach Products
	

Defendants' Products <sup>3</sup>	Authentic Coach Products
	

Thus, all of these products should be deemed counterfeit, and summary judgment on Coach's 15 U.S.C. § 1114 claim should be granted.

### 3. Defendants' Products Bear Marks Identical and/or Substantially Indistinguishable from the Coach Marks

Even if the goods were not considered "counterfeit," an analysis of the Sleekcraft factors would still warrant summary judgment in favor of Coach. Where there is a "virtual identity of marks" used with the same type of product, "likelihood of confusion would follow as a matter of course." [Brookfield, 174 F.3d at 1056; *see also* Suarez Corp. Industries v. Earthwise Technologies, Inc., 2008 WL 4934055 (W.D. Wash., 2008) (maker of a space heater was entitled to summary judgment on a trademark infringement claim it brought against the maker of another heater where marks at issue were identical, and both manufacturers simultaneously sold related products marketed through the Internet); Nissan Motor Co. v. Nissan Computer Corp., 378 F.3d 1002, 1019 (9th Cir.2004) (affirming summary judgment where the marks were "legally identical," the goods at issue were related, and the marketing channels overlapped); Kyjen Co., Inc. v. Vo-Toys, Inc., 223 F.Supp.2d 1065 (C.D.Cal. 2002) (summary judgment on trademark infringement claim granted in favor of

1 plaintiff where plaintiff's "bungee" mark was infringed by competitor's use of same  
2 term for similar product))]

3 The eight factors to be considered under the traditional Sleekcraft balancing test  
4 include the: 1) strength of the mark; 2) proximity or relatedness of the goods; 3)  
5 similarity of the marks; 4) evidence of actual confusion; 5) marketing channels used;  
6 6) type of goods and the degree of care likely to be exercised by the purchaser; 7)  
7 defendant's intent in selecting the mark; and 8) likelihood of expansion of product  
8 lines. [Sleekcraft at 348-49; Downing v. Abercrombie & Fitch, 265 F.3d 994, 1007  
9 (9th Cir. 2001)]

#### 10 (a) Strength of the Coach Mark Designs

11 A strong trademark is distinctive in that the public is aware of the mark and  
12 associates that mark with a single business or source of supply. [E. & J. Gallo Winery  
13 v. Pasatiempos Gallo, 905 F. Supp. 1403, 1412 (E.D. Cal. 1994)] Marks may be  
14 strengthened by extensive advertising, length of time in business, public recognition,  
15 and uniqueness. [Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175, 1179 (9th  
16 Cir. 1988)] A strong mark is "inherently distinctive" and is "afforded the widest ambit  
17 of protection from infringing uses." [Sleekcraft at 349] Registered trademarks are  
18 "presumed to represent the source [of the goods or services] in the minds of the  
19 public." [Gucci America, Inc. v. Action Activewear Inc., 759 F. Supp. 1060, 1064  
20 (S.D.N.Y. 1991)] Registered marks inherently possess a "secondary meaning,"  
21 whereby the mark comes to identify "not only the goods but the source of those  
22 goods." [Id.]

23 Coach has used the Coach Word mark in association with the sale of goods since  
24 as early as 1963 (Lau Decl., ¶ 7, Ex. 1); the Signature C Mark since as early as 2002  
25 (Lau Decl., ¶ 8, Ex. 2); the Amended CC & Design Signature C mark as early as 2005  
26 (Lau Decl., ¶ 9, Ex. 3); the Coach & Lozenge Design mark as early as 1997 (Lau  
27 Decl., ¶ 10, Ex. 4); the "Heritage Logo" as<sup>17</sup> early as 2008 (Lau Decl., ¶ 11, Ex. 5); the



Coach Stylized as early as 2007 (Lau Decl., ¶ 12, Ex. 6); the Coach Est. 1941 mark as early as 2007. (Lau Decl., ¶ 13, Ex. 7) Such use and registration stands as proof of the strength of all of the aforementioned Coach Marks, and their validity.

By virtue of the wide renown acquired by the Coach Marks coupled with its geographic distribution and extensive sales and advertising of product under said marks, they have acquired secondary meaning in the mind of the purchasing public and have achieved a high degree of consumer recognition. (Lau Decl. ¶¶ 14-16)

### **(b) Relatedness of Goods**

Examples of “proximate” goods are those which complement one another, are sold to the same class of consumers, or are similar in use and function. [Saks & Co. v. Hill, d.b.a., Sacks Thrift Avenue, 843 F. Supp. 620, 623 (S.D. Cal. 1993)] Both Coach and Defendants are selling luggage, handbags, and related goods bearing marks identical and/or confusingly similar to the Coach Marks. (Bambenek Decl., ¶ 6, Ex. 1; Marchand Decl., Ex. 1 at 2:10-3:16; Marchand Decl., Ex. 2, at 2:10-3:17; Marchand Decl., Ex. 3 at 9:17-10:1, 14:14-15; Lau Decl. ¶ 4) Thus, the goods are indeed “related” for purposes of determining likelihood of confusion.

### **(c) Similarity of Marks**

“Similarity of the marks is tested on three levels: sight, sound, and meaning.” [Sleekcraft, 599 F.2d at 351 (citation omitted)] “Each must be considered as they are encountered in the marketplace.” [Id.; Nutri/Sys., Inc. v. Con-Stan Indus., Inc., 809 F.2d 601, 605-606 (9th Cir.1987); Official Airline Guides v. Goss, 6 F.3d 1385 (9<sup>th</sup> Cir., 1993) (no confusion between “OAG Travel Planner” and “The Travel Planner USA.”)]

As discussed above, the marks that appear on Defendants' products are identical and/or confusingly similar to the aforementioned Coach Marks. In fact, the manner in which the infringing marks appear on Defendants' products mimic the manner in which the Coach Marks appears on

Coach's authentic products. (Bambenek  
18

Decl., Ex. 1) Both Mr. Bambenek, a trained and qualified private investigator, and Mr. Lau, staff attorney for Coach, Inc., have attested to the confusing counterfeit nature of the marks on Defendant's products. (Bambenek Decl., ¶ 6; Lau Decl., ¶¶ 19-20)

**(d) Evidence of Actual Confusion**

"The failure to prove instances of actual confusion is not dispositive against a trademark plaintiff, because actual confusion is hard to prove; difficulties in gathering evidence of actual confusion make its absence generally unnoteworthy." [Brookfield Communications v. West Coast Entertainment, 174 F.3d 1036, 1050 (9th Cir. 1999)] Moreover, Plaintiffs need not prove actual confusion in order to prevail on a motion for summary judgment in a counterfeiting case. [Polo Fashions, Inc., 592 F. Supp. at 651] The counterfeiting of Coach products undermines the reputation of the Coach trademarks and reduces the demand for genuine Coach products. Given the striking similarity between Defendants' goods and authentic Coach goods, actual confusion among members of the public would be expected.

**(e) Marketing Channels Used**

"Similarity of trade channels does not require sales of both parties' goods by identical vendors, but only by the same type of distribution channels." [E. & J. Gallo Winery, 905 F. Supp. at 1413] Like Defendants, Coach sells its products on a wholesale and retail basis. (Lau Decl., ¶ 4; Marchand Decl., Ex. 3 at 10:12-21) Furthermore, Coach products are marketed and advertised online at [www.coach.com](http://www.coach.com), similar to products from Pegasus Theater Shop being marketed and advertised at [www.Pastagas-Pegasus.com](http://www.Pastagas-Pegasus.com). (Lau Decl. ¶ 4; Marchand Decl., Ex. 3 at 10:8 - 11) Thus, this factor weighs in favor of a finding of likelihood of confusion between Defendants' and Coach's products.

**(f) Degree of Purchaser Care**

In assessing likelihood of confusion, the standard used is the typical buyer exercising ordinary care, including "the <sup>19</sup>ignorant, the unthinking and the

credulous.” [Fleischmann Distilling Corp. v. Maier Brewing Co., 314 F.2d 149, 156 (9th Cir. 1963)] The degree of purchaser care is indeed quite low in this situation where Defendants are selling handbags, wallets, watches, reading glasses, and coin purse, which are relatively inexpensive.

**(g) Defendants’ Intent in Selecting the Mark**

Defendants were on constructive notice as to Coach’s rights to the Coach Marks based upon its various trademark registrations to said marks. [15 U.S.C. §1065] Due to the high degree of similarity between the marks which appear on Defendants’ products and the Coach Marks, it is more than likely that selection of the infringing products was done with the intention of selling handbags which mimicked Coach’s products. In fact, storeowner Sherl Stocking stated he inspected said products before displaying them for sale and upon noticing the Coach mark, intended to sell the products because they bore said mark. (Marchand Decl., Ex. 3 at 17:5-15)

**(h) Likelihood of Expansion of Product Lines**

“A strong possibility that either party may expand his business to compete with the other will weigh in favor of finding that the present use is infringing.” [Sleekcraft at 354] As discussed above, the products sold by Coach and Defendants are the same, and both sell on a retail and wholesale basis. Thus, there is already a conversion of product lines here that would warrant a finding of likelihood of confusion

After weighing all the factors set out by Sleekcraft, there is no doubt that there is a likelihood of confusion between Defendants’ goods and those of Coach. Thus, summary adjudication should be granted in favor of Coach.

**4. Strict Liability for Violations of the Lanham Act**

Ignorance is no defense to violations of the Lanham Act. [15 U.S.C. §1114; Phillip Morris, 352 F.Supp. 2d at 1073] Indeed, “sellers bear strict liability for violations of the Lanham Act”. [Henri’s Food Products Co. v. Kraft Inc., 717 F.2d 352, 359 (9th Cir. 1983)] “Notably, as in the copyright realm, international



1 infringement may lead to enhanced statutory damages, but is not required to prove  
 2 defendant's liability." [Taubman Co. v. Webfeats, 319 F.3d 770, 775 (6th Cir. 2005)]  
 3 Thus, Defendants' intent is irrelevant to this motion which is limited to the issue of  
 4 Defendants' liability. Since it is clear that the products sold by Defendants infringe  
 5 upon Coach's federally registered marks, the only question that remains is the  
 6 appropriate remedy.

### 7 **5. Defendant Sherl Stocking's Individual Liability**

8 [A] corporate officer or director is, in general, personally liable for all torts  
 9 which he authorizes or directs or in which he participates, notwithstanding that he  
 10 acted as an agent of the corporation and not on his own behalf." [Comm. for Idaho's  
 11 High Desert, Inc. v. Yost, 92 F.3d 814, 823 (9th Cir.1996)] An officer of a corporation  
 12 can be personally liable for trademark infringement and unfair competition if "the  
 13 officer is a moving, active conscious force behind the defendant corporation's  
 14 infringement." [See, e.g., Bambu Sales, Inc. v. Sultana Crackers, Inc., 683 F.Supp.  
 15 899, 913-14 (E.D.N.Y.1988) (trademark infringement); Playboy Enterprises, Inc. v.  
 16 Starware Publishing Corp., 900 F.Supp. 438, 441-42 (S.D.Fla.1995) (copyright  
 17 infringement); Babbit Electronics, Inc. v. Dynascan Corp., 828 F.Supp. 944  
 18 (S.D.Fla.1993), aff'd 38 F.3d 1161 (11th Cir.1994) (holding "a corporate officer who  
 19 directs, controls, ratifies, participates in, or is the moving force behind the infringing  
 20 activity, is personally liable for such infringement without regard to piercing the  
 21 corporate veil)]

22 Defendant Sherl Stocking is the Owner/COO of Pegasus Theater Shops; Mr.  
 23 Stocking purchased the Disputed Products. (Marchand Decl., Ex. 3, at 14:7 - 14:15)  
 24 Pursuant to the documents and discovery responses provided thus far, it does not  
 25 appear as though there is anyone else other than Mr. Stocking who was involved in the  
 26 purchase, distribution, and sale of Infringing Products. Thus, Mr. Stocking is  
 27 personally liable for trademark infringement as he was the active,

moving, conscious force behind Pegasus' infringing activities.

**IV. COACH IS ENTITLED TO A PERMANENT INJUNCTION PURSUANT TO 15 U.S.C. § 1116**

“The Lanham Act gives the court ‘power to grant injunctions according to the rules of equity and upon such terms as the court may deem reasonable, to prevent the violation’ of a mark holder’s rights.” [Pepsico, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002); 15 U.S.C. §1116(a)] As such, Coach requests that this Court order a permanent injunction against Defendants to enjoin them from using the Coach Marks in connection with the sale and offer for sale of infringing products.

**V. CONCLUSION**

Based on the foregoing, Plaintiffs Coach, Inc. and Coach Services, Inc. respectfully request that this Court grant summary judgment in favor of Plaintiffs against Defendants Pegasus Theater Shop and Sherl Stocking on the issue of liability for trademark infringement. Plaintiff further requests that this Court issue a permanent injunction pursuant to 15 U.S.C. § 1116.

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